MEMORANDUM FOR

NOVEMBER 13, 2013 WATER QUALITY COMMITTEE (WQC) AND NOVEMBER 14, 2013 ENVIRONMENTAL MANAGEMENT COMMISSION (EMC) MEETINGS

SUBJECT: Petition for Rulemaking to Reclassify a Portion of the Dan River to Class C

The NC EMC is to review a petition for rulemaking to reclassify a portion of the Dan River (Caswell County, Roanoke River Basin) to Class C from Class Water Supply-IV (WS-IV) and WS-IV CA. The Dan River portion of interest lies in rural northern Caswell County, along the North Carolina-Virginia state line, and its drainage area within NC is comprised of approximately 23,000 acres and 40 miles of named waterbodies. Caswell County submitted the petition, which has been deemed complete according to state regulations and statutes. The petition states that the current classification imposes "...unnecessary restrictions on land use within the County not justified by objective analysis of current water needs within the County and surrounding jurisdictions." The current classification became effective in 2012, and Caswell County has exceeded the regulatory timeline to adopt and implement water supply watershed protection ordinances containing the WS-IV new development rules for the subject waters, which are only located within Caswell County.

As part of the rulemaking process for the WS-IV CA and WS-IV reclassification, it was determined that the subject waters met water supply water quality standards and criteria, could be treated for potable water supply use, and were needed for the near future as an emergency water supply source and eventually as a permanent water supply source. A Finding of No Significant Impact (FONSI) for the water supply project was issued, and as a reminder, a FONSI indicates that a project will not result in significant impacts to the environment. Prior to the required rulemaking public comment period, Caswell County did provide in writing, in the form of an interlocal agreement with three other nearby local governments including two proposed users of the subject waters, that it would submit to the NC EMC a water supply watershed ordinance acceptable to the EMC for use of the Dan River as a public water supply. Staff with Caswell County, with the exception of Soil and Water Conservation District representatives, did not attend the public hearing and did not submit verbal or written comments during the comment period. The Attorney General's Office issued a letter stating that the classification was adopted and promulgated according to state laws and the EMC's rules, which include Office of State Budget and Management (OSBM) approval of a fiscal note and approval by the Rules Review Commission (RRC). The final step of this reclassification, federal approval by the USEPA, was granted earlier this year, concluding this nearly 10-year reclassification process.

Currently, water supply water quality standards apply to the subject waters, and no new landfills and no new land application sites are allowed within 0.5 mile and draining to a riverine intake, which are restrictions that all publicly used and classified water supplies incur. Similarly, wastewater discharge and new development restrictions apply to the lands and waters draining to a riverine public water supply intake, but the WS-IV requirements are the least restrictive of the state's WS classifications for such activities. During the onset of reclassification process concluding in 2012, there were no existing permitted wastewater discharges and no known planned wastewater discharges, development, landfills or land application sites that the reclassification would impact.

Staff recommends sending this item to the November 2013 WQC and EMC meetings.